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CORPORATION

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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 OAKLAND DIVISION
14

15 DISTRICT COUNCIL 37 HEALTH &
16 SECURITY PLAN, DON L. COLEMAN and
MAUREEN COWIE, individually and on behalf
of all others similarly situated,

17 Plaintiff,

18 v.

19 McKESSON CORPORATION, a Delaware
20 corporation,

21 Defendant.
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Case No. C06-00718 SBA

**ORDER GRANTING
McKESSON'S MOTION TO
DISMISS OR TO STAY**

Date: May 9, 2006
Time: 1:00 p.m.
Hon. Sandra B. Armstrong

1 Defendant McKesson Corporation's Motion to Dismiss or to Stay came before the Court
 2 for hearing on May 9th, 2006, the parties being represented by their respective counsel. The Court
 3 being fully advised and having considered the Memoranda, Declarations, and Exhibits and other
 4 evidence submitted, the arguments of counsel, and good cause appearing,

5 IT IS HEREBY ORDERED that Defendant's Motion to Dismiss is GRANTED
 6 as follows:

7 Under the first-to file-rule, the Court has the authority to stay or dismiss an action when "a
 8 complaint involving the same parties and issues has already been filed in another district."
 9 *Alltrade, Inc. v. Uniweld Prods., Inc.*, 946 F.2d 622, 625 (9th Cir. 1991). The Court finds that
 10 this case was filed on February 1, 2006, after a similar action against McKesson Corporation was
 11 filed in the District of Massachusetts on June 2, 2005. "Exact parallelism between the two
 12 actions need not exist; it is enough if the parties and issues in the two actions are 'substantially
 13 similar.'" *Alioto v. Hoiles*, No. C 04-1395 PJH, 2004 WL 2326367, at *5 (N.D. Cal. Oct. 12,
 14 2004) (citing *Nakash v. Marciano*, 882 F.2d 1411, 1416 (9th Cir. 1989)). Where each of these
 15 factors is present, the second-filed action should be dismissed or stayed. *See, e.g., VISX, Inc. v.*
 16 *Garabet*, No. C 00-3633 CRB, 2000 WL 1929328, at *2, *4 (N.D. Cal. Dec. 18, 2000) (dismissal
 17 without prejudice); *N. Am. Cas. Ins. Co. v. Encompass Power Servs., Inc.*, No. Civ.
 18 S051587DFLGGH, 2005 WL 3453947, at *2-*3, *5 (E.D. Cal. Dec. 16, 2005) (stay);
 19 *Alibaba.com, Inc. v. Litecubes, Inc.*, No. C03-5574 MHP, 2004 WL 443712, at *2-*3 (N.D. Cal.
 20 March 8, 2004) (stay).

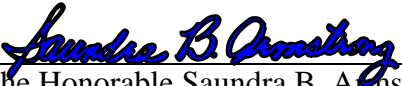
21 The Court finds that the parties to the two cases are substantially similar. Although the
 22 named plaintiffs are different in the two cases, the named plaintiffs are members of classes which
 23 are defined identically in the two actions and are therefore substantially similar. *See Peak v.*
 24 *Green Tree Fin. Servicing Corp.*, No. C 00-0953 SC, 2000 WL 973685, at *2-*3 (N.D. Cal. July
 25 7, 2000). The presence of an additional defendant in the Massachusetts action does not render the
 26 actions dissimilar for the purposes of the first to file rule. *See N. Am. Cas. Ins. Co.*, 2005 WL
 27 3453947, at *3 n.4. The court also finds that the issues in the two cases are substantially similar,
 28 resting on identical factual allegations and asserting identical or analogous causes of action

1 against McKesson Corporation. *See L. Cohen Group v. Herman Miller, Inc.*, C 05-4476 SI,
2 2006 U.S. Dist. LEXIS 2301, at *9 (N.D. Cal. Jan, 18, 2006).

3 Therefore, the Court ORDERS that this action is dismissed without prejudice under the
4 first-to-file rule.

5 **IT IS SO ORDERED.**

6 Dated: May 11, 2006

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8 The Honorable Sandra B. Armstrong
9 United States District Judge
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